



## The Nordic Plan and general legal principles:

*The "Champion Express" judgement as an  
example or an outlier*

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## Introduction – choice of law

- Norwegian law is the default background law if the claims leader has his head office in Norway and also if the claims leader is non-Nordic, cf. the Plan, Cl. 1-4A and 1-4B
- If the claims leader's head office is in another Nordic country, or if arbitration in another Nordic country is agreed, the law of that Nordic country applies
- Choice of other countries' law and venue is not uncommon



## The Nordic Plan and ICA of 1989

- Insurance contracts concerning ocean going vessels may depart from ICA, cf. Sec. 1-3 and 2-3
  - Exception: certain aspects of liability insurance, cf. ICA Sec. 7-8
- The Commentary to the Nordic Plan Cl. 1-4A makes it clear that the ICA is applicable as background law

Gard and Skuld's P&I rules take a different approach:

- The rules shall be governed by Norwegian law, except that the ICA of 1989 shall not apply.

Cefor form also different from 1989 to 1996:

- The insurance contract should not be subject to the ICA of 1989, but to *"the agreed insurance conditions, the Nordic Insurance Plan of 1964 and the ICA of 1930 with the insurance practice which has been developed in connection with these provisions"*





*This method of  
regulation implies that  
there is no need to refer  
to the ICA in this manual*

Wilhelmsen & Bull, *Handbook on Hull  
Insurance*, 2<sup>nd</sup> edition (2017), page 25







*The Plan appears as an almost complete codification of the marine insurance rules*

Brækhus & Rein, *Handbook on Hull Insurance* (1993), page 8, and Rt-1998-1032 *Ocean Blessing*





*The tribunal has no problem  
with this provision on  
depositing in ICA section 7-4  
supplementing the NMIP*

Arbitration award of 19 December 2022 in  
*Eurocargo Catania & Eurocargo Sicilia*



*... the question of repayment is not regulated by the marine insurance plan, but by the rules on *condictio indebiti**

Rt-1985-290 *Birgo*, and followed up in  
Rt-1995-1641 *Torson* and  
Rt-1997-1029 *Marlin*





# "Champion Express"

LA-2021-97236-4

- The Owners claimed condemnation (Constructive Total Loss), cf. the Nordic Plan Cl. 11-3
- Were the repair costs above 80 % of the agreed insurable value?
- Were the Owners obliged to clarify if a NOx reducer dispensation from the flag state could be obtained, cf. MEPC.230(65)?
- And did the Owners' efforts to clarify the dispensation question have to be wholehearted – despite the Owners' interest in not getting a dispensation?







## "Champion Express"

Court of Appeal:

- Referred to the Commentary to Cl. 12-1:

*If the insurer is otherwise able to document that the owner has not made any effort to obtain the least expensive repairs possible, or has in some other way been disloyal to the insurer, it follows from general principles of contract law that the insurer will not have to pay the additional costs.*

- I.e. the principle of loyalty in contracts is applicable to the insurer's obligation to cover actual repair costs
- Should this general contract law principle also supplement the condemnation rule in Cl. 11-3?



## "Champion Express"

Court of Appeal referred to:

- ND-1992-172 *Bergliff* and Sørensen, "Konstruktivt totalforlis" in *Marius*, no. 361 (2008)
- Rt-1973-887, Rt-2004-1256 and legal theory on the duty to seek dispensations, premissions etc.

And found that:

- Cl. 11-3 should be supplemented with the general principle of loyalty in contracts
- Including a duty to wholeheartedly attempt to obtain dispensations, permissions etc. from public authorities when that is relevant for the performance of the contract







*This non-statutory principle must be considered so generally established that it also applies to insurance, where a public law waiver may provide for a so much cheaper repair that it can have a decisive impact on the question of condemnation*

LA-2021-97236-4 *Champion Express*



## "Champion Express"

Court of Appeal:

- Did the Owners also have a duty to apply for dispensation from rules regarding protection of the environment?
- The Court did not rule out that moral objections against a cheaper repair option that could have negative effects on the environment could be legitimate
- But since the IMO resolution constituted a transition regime regarding replacement of engines in older ships where protection of the environment had already been considered, such objections could not prevail in the matter at hand





## "Champion Express"

Court of Appeal:

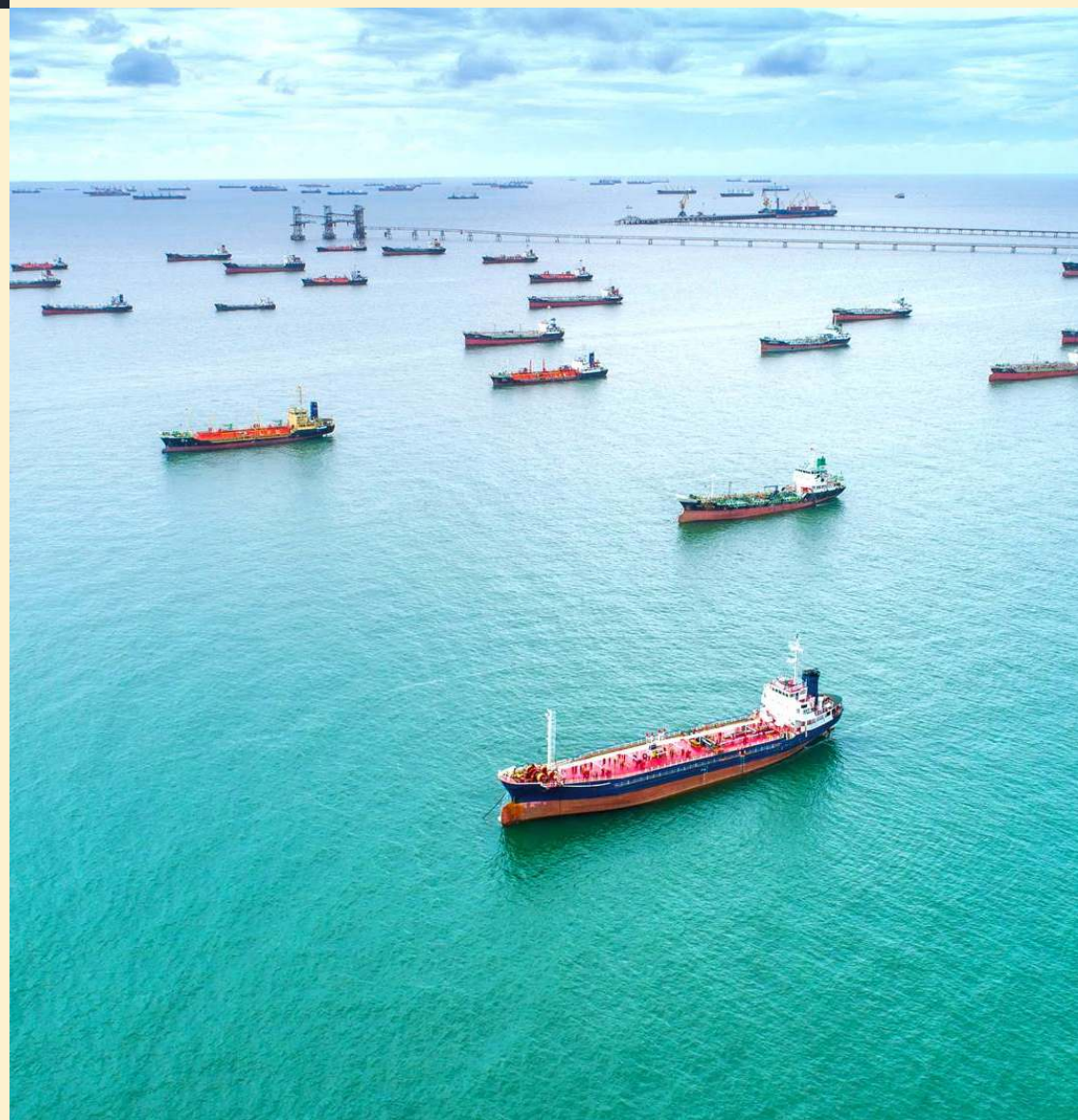
- Concluded that the Owners had not made a wholehearted attempt to clarify if dispensation could be obtained
- On the contrary, the Owners had mislead the insurers and attempted to achieve a rejection of the dispensation query
- Also concluded that the Owners would likely have obtained the dispensation – if they had actively pursued that possibility
- The insurers were acquitted





## Example or outlier?

- What can be deduced from the *Champion Express* about the significance of general legal principles to the Nordic Plan?



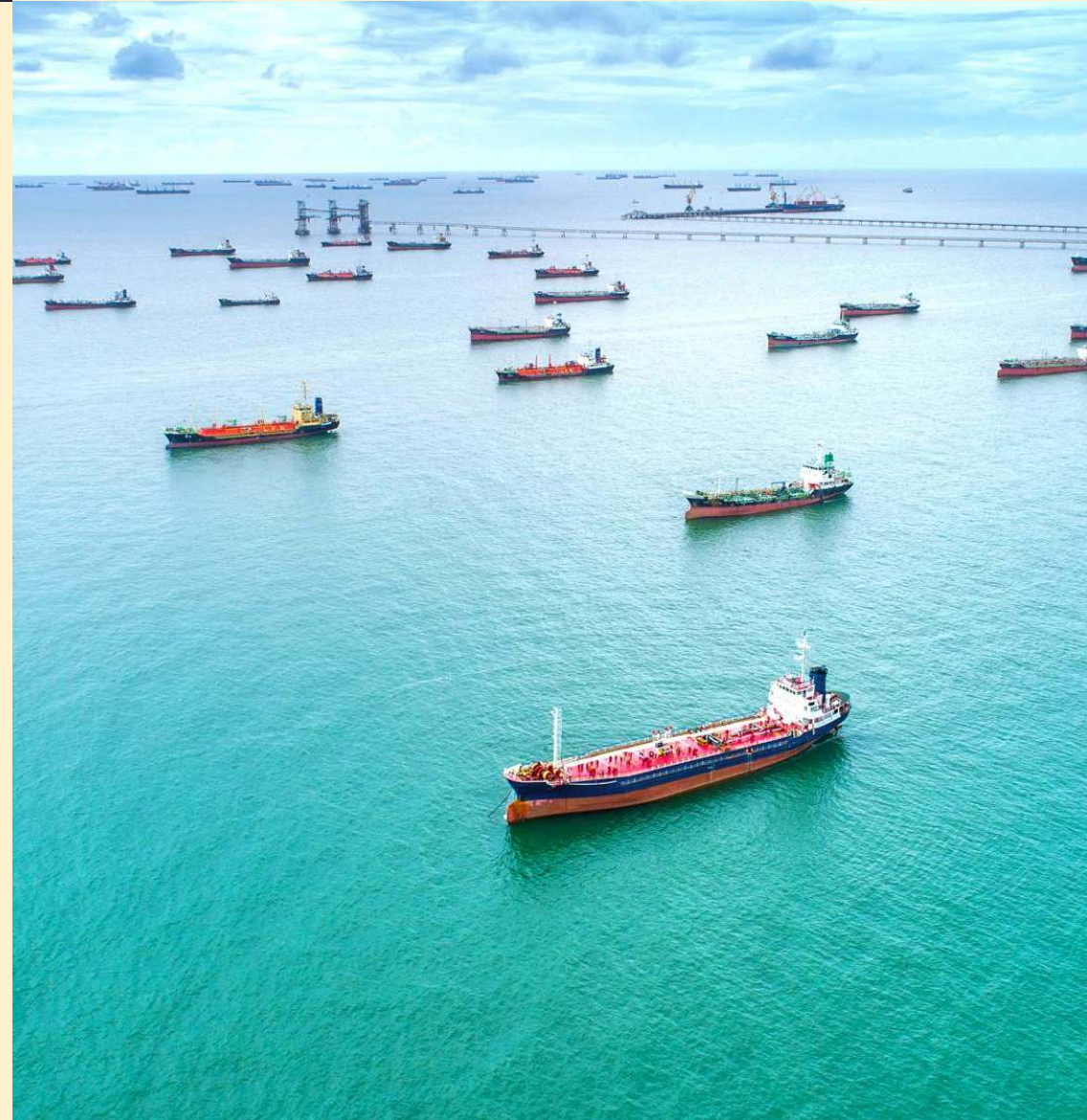




## Example or outlier?

- 1) If the collection of evidence in condemnation cases is not loyal, the factual basis for the cost calculation may be distorted and cannot be trusted
- 2) The Commentary contains a number of references to general legal principles – which obviously applies
- 3) Otherwise: Courts are likely to supplement the Plan with general legal principles – if the principles provide answers where the Plan and Commentary are silent

I.e. the *Champion Express* is an example





## Example or outlier?

- But the number of cases where general legal principles come into play (without being mentioned in the Commentary) is low due to the Plan's level of detail
- In that sense; an outlier